



317 – MERGER, ACQUISITION, REORGANIZATION, JOINT VENTURE AND CHANGE OF OWNERSHIP REQUESTS

EFFECTIVE DATE: 06/01/2014

STAFF RESPONSIBLE FOR POLICY: DHCM FINANCE

I. PURPOSE

This Policy applies to the Acute Care, ALTCS/EPD, and CRS Contractors. The Policy establishes the procedure for Contractor approval for proposed mergers and acquisitions, reorganization, change in articles of incorporation, joint ventures, and changes in ownership as required by contract.

II. DEFINITIONS

ACQUISITION	One company acquires all of another target company's assets, capital, or stock.
ARTICLES OF INCORPORATION	The basic legal instrument required to be filed with the state upon incorporation of a business (sometimes also referred to as the Certificate of Incorporation or the Corporate Charter).
CHANGE OF OWNERSHIP	Any change in the possession of equity in the capital, stock, profits, or voting rights with respect to a business such that there is a change in the persons or entities having the controlling interest of an organization, such as changes that result from a merger or acquisition, or, with respect to non-stock corporations (e.g., non-profit corporations), a change in the members or sponsors of the corporation or in the voting rights of the members or sponsors of the corporation.
JOINT VENTURE	A business arrangement in which two or more parties agree to pool their resources for the purpose of accomplishing a specific task. This task can be a new project or any other business activity. In a joint venture, each of the participants is responsible for profits, losses and costs associated with it. However, the venture is its own entity, separate and apart from the participants' other business.

**MERGER**

Two companies join together to form a single entity, using both companies' assets or stock, or, for non-stock corporations (e.g., non-profit corporations), the conversion of memberships, sponsors or their voting rights. Both companies cease to exist separately and new stock is issued for the resulting organization, or, for non-stock corporations (e.g., non-profit corporations), memberships or sponsors are combined or their voting rights are transferred to the new corporation.

REORGANIZATION

An arrangement where a company attempts to restructure its business to ensure it can continue operations. A company restructuring may work with its creditors to restate its assets and liabilities which may be an attempt to avoid a bankruptcy or the result of a bankruptcy.

III. POLICY**A. MERGERS, ACQUISITION, REORGANIZATION, JOINT VENTURES OR CHANGE OF OWNERSHIP**

A proposed merger, acquisition, reorganization, change in articles of incorporation, joint venture, and change in ownership of the Contractor shall require prior approval of AHCCCS. The Contractor's transition plan, described below, will be reviewed by AHCCCS to:

1. Ensure uninterrupted services and ongoing adequate access to care and choice for members;
2. Ensure the new entity's ability to maintain and support the contract requirements including the commitments in the proposal submitted to AHCCCS during the procurement process;
3. Ensure major functions of the Contractor's organization, as well as AHCCCS programs, are not adversely affected; and
4. Ensure the integrity of a fair, competitive AHCCCS procurement process for managed care contracts, which is one of the core founding principles of the AHCCCS program.

AHCCCS reserves the right to obtain stakeholder input on the proposed ownership change through a public notice and feedback process.



The Contractor shall submit a written notification to AHCCCS of any proposed merger, acquisition, reorganization or change of ownership 180 days prior to the effective date. This notification shall include:

1. A detailed description of the type of change or new corporate structure and the purpose thereof; and
2. A detailed transition plan as outlined below.

B. TRANSITION PLAN

The transition plan shall be submitted 180 days prior to the effective date. Items for which information is not yet available for submission, or is still considered draft, shall be noted and must be submitted or resubmitted no later than 90 days prior to the effective date.

All transition plan documents are to be submitted electronically via the secured File Transfer Protocol (FTP) server to the designated DHCM Financial Consultant.

The Contractor must submit the following as part of the transition plan:

1. A letter of explanation which includes the following information:
 - a. The type of entity if a new entity will be formed (Limited Liability Companies (LLCs) are not acceptable)
 - b. Any material change to operations as specified in Section D of the Contract
2. Proof that any performance bond requirements have been met by the new entity, if the original entity is no longer a going-concern. The Performance Bond shall be in a form acceptable to AHCCCS. See ACOM Policy 306. (This may be submitted at the 90 day timeframe noted above).
3. Documents including the following:
 - a. The formal name and any proposed logo used by the resulting organization
 - b. The organizational chart of the new resulting organization or proposed changes to the existing organizational chart if a new entity is not being formed.
 - c. Current audited financial statements of current Contractor and merging entity
 - d. Pro-forma financial statements of resulting entity post-merger
4. For mergers, acquisitions, reorganizations, joint ventures or changes in ownership of organizations currently providing services to AHCCCS members, a description of the following:
 - a. An assessment of any potential interruption of services to members, and steps the Contractor is taking to ensure there are no interruptions



- b. Any changes to the management and staffing of the organization currently overseeing services provided under the contract
 - c. Any changes to existing administrative services subcontracts
 - d. Any changes to the administration of critical components of the organizations, including but not limited to information systems, prior authorization, claims processing or grievances
 - e. The Contractor's plan for communicating the change to members, including a draft notification to be distributed to affected members and providers
 - f. The Contractor's plan for changes to critical member information, including the website, member and provider handbook and member ID card
 - g. Any anticipated changes to the network
5. Upon AHCCCS approval, the following documents must be submitted within 120 days of the completed merger, acquisition, reorganization, change in articles of incorporation, joint venture or change of ownership:
- a. The articles of incorporation, if applicable
 - b. Copies of all affiliation agreements
 - c. Any additional information requested by AHCCCS

C. ADDITIONAL SUBMISSION REQUIREMENTS

1. The Contractor shall submit the following to the appropriate AHCCCS division no later than 45 days prior to the effective date and commencement of operations:
- a. [Automatic Clearing House \(ACH\) Vendor Authorization Form](#). The ACH form is to be submitted as directed on the form.
 - b. Information regarding Disclosure of Ownership and Control and Disclosure of Information on Persons Convicted of a Crime in accordance with the 42 C.F.R. 101 through 106, the Contractual Provisions in Section D, Corporate Compliance and ACOM Policy 103. The information is to be submitted via secured FTP server to the Office of Inspector General (OIG).

AHCCCS reserves the right to request additional items deemed necessary to complete the evaluation.

D. AHCCCS Disposition of Request

AHCCCS may:

- 1. Approve the proposal
 - a. Without conditions
 - b. With conditions which may include but are not limited to:
 - i. Allowing an open enrollment for plan membership
 - ii. More rigorous oversight for a specified period of time
 - iii. A cap on enrollment



2. Deny the proposal

If AHCCCS denies the proposal, and if the Contractor moves forward, AHCCCS may terminate some or all of the Geographic Service Areas that are part of the contract.

IV. REFERENCES

- Acute Care Contract, Section D
- ALTCS/EPD Contract, Section D
- CRS Contract, Section D
- ACOM Policy 103, Attachment C, Disclosure of Ownership & Control and Disclosure of Information on Persons Convicted of a Crime
- ACOM Policy 306
- 42 C.F.R. 455.101 through 106